

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ABIGAL BRASS

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen or Principal Place of Business in This State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input checked="" type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 420 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/>	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/>	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Securities/Commodities/ Exchange	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 890 Other Statutory Actions	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 412 Employment	<input type="checkbox"/> 511 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 413 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWV (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) _____ 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692
Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

03/07/11

Sarah Patterson

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 323 Main Street, Ste 340, Beacon, NY 12508

Address of Defendant: 507 Prudential Road, Horsham PA 19041

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts

2. FELA

2. Airplane Personal Injury

3. Jones Act-Personal Injury

3. Assault, Defamation

4. Antitrust

4. Marine Personal Injury

5. Patent

5. Motor Vehicle Personal Injury

6. Labor-Management Relations

6. Other Personal Injury (Please specify)

7. Civil Rights

7. Products Liability

8. Habeas Corpus

8. Products Liability — Asbestos

9. Securities Act(s) Cases

9. All other Diversity Cases

10. Social Security Review Cases

(Please specify)

11. All other Federal Question Cases

15 U.S.C §1692

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Tara L. Patterson, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 3-7-11

Attorney-at-Law

883413

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3-7-11

Attorney-at-Law

883413

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

Abigail Brass : CIVIL ACTION
 v.
 NCO Financial Systems, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

3-7-11
Date

Tara L. Patterson
Attorney-at-law

Abigail Brass
Attorney for

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FAX Number

E-Mail Address

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

ABIGAL BRASS,)
Plaintiff)
v.) Case No.:
NCO FINANCIAL SYSTEMS, INC.,) **COMPLAINT AND DEMAND FOR**
Defendant) **JURY TRIAL**
) **(Unlawful Debt Collection Practices)**

COMPLAINT

ABIGAL BRASS ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (FDCPA).

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3 3. Defendant conducts business and has an office in the Commonwealth
4 of Pennsylvania, and therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
7 2202.

8 10 **PARTIES**

9 11 6. Plaintiff is a natural person residing in Beacon, New York 12508.

12 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
13 1692a(3).

14 8. Defendant is a national debt collection company with its corporate
15 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-
16 2308.

17 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §
18 1692a(6), and sought to collect a consumer debt from Plaintiff.

19 10. Defendant acted through its agents, employees, officers, members,
20 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
21 representatives, and insurers.

1 PRELIMINARY STATEMENT

2 11. The Fair Debt Collection Practices Act (“FDCPA”) is a
3 comprehensive statute, which prohibits a catalog of activities in connection with
4 the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
5 imposes civil liability on any person or entity that violates its provisions, and
6 establishes general standards of debt collector conduct, defines abuse, and provides
7 for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
8 FDCPA declare certain rights to be provided to or claimed by debtors, forbid
9 deceitful and misleading practices, prohibit harassing and abusive tactics, and
10 proscribe unfair or unconscionable conduct, both generally and in a specific list of
11 disapproved practices.

12 12. In particular, the FDCPA broadly enumerates several practices
13 considered contrary to its stated purpose, and forbids debt collectors from taking
14 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
15 First, a “debt collector may not engage in any conduct the natural consequence of
16 which is to harass, oppress, or abuse any person in connection with the collection
17 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
18 deceptive, or misleading representation or means in connection with the collection
19 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
20 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.

7 13. In enacting the FDCPA, the United States Congress found that
8 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
9 collection practices by many debt collectors,” which “contribute to the number of
10 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.

16 14. Congress enacted the FDCPA to regulate the collection of consumer
17 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
18 abusive debt collection practices by debt collectors, to insure that debt collectors
19 who refrain from using abusive debt collection practices are not competitively
20 disadvantaged, and to promote consistent State action to protect consumers against
21 debt collection abuses.” 15 U.S.C. § 1692e.

24 **FACTUAL ALLEGATIONS**

25 15. At all pertinent times hereto, Defendant was hired to collect a

1 consumer debt allegedly owed by Plaintiff.

2 16. The alleged debt at issue arose out of transactions which were
3 primarily for personal, family, or household purposes.
4

5 17. Defendant made continuous and repeated collection calls to Plaintiff
6 at least through May 19, 2010.
7

8 18. Defendant constantly and continuously placed collection calls to
9 Plaintiff seeking and demanding payment for an alleged debt owed, sometimes
10 calling multiple times in a single day.
11

12 19. Defendant threatened to report the alleged debt on Plaintiff's credit
13 report if immediate payment was not made.
14

15 20. Further, Defendant deceptively claimed to Plaintiff that it did not need
16 to send her written notification regarding the alleged debt.
17

18 21. Upon information and belief, within five (5) days of its initial contact
19 with Plaintiff, Defendant failed to send Plaintiff written notification of her rights
20 to dispute the debt and/or request verification of the debt.
21

22 22. To date, Plaintiff has not received any written correspondence from
23 Defendant advising her of her rights to dispute the debt and/or request verification
24 of the debt.
25

26 23. Defendant conducted its collection activities in ways that were
27 factually misrepresented and in violation of the FDCPA.
28

CONSTRUCTION OF APPLICABLE LAW

24. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

25. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

26. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude

1 which includes the ignorant, the unthinking, and the credulous, and the fact that a
2 false statement may be obviously false to those who are trained and experienced
3 does not change its character, nor take away its power to deceive others less
4 experienced.” Id. The least sophisticated consumer standard serves a dual
5 purpose in that it ensures protection of all consumers, even naive and trusting,
6 against deceptive collection practices, and protects collectors against liability for
7 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
8 1318.

11

12 **COUNT I**
13 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**
14 **ACT**

15 27. Defendant violated the FDCPA based on the following:

16 a. Defendant violated §1692 of the FDCPA generally;

17 b. Defendant violated §1692d of the FDCPA by engaging in conduct
18 the natural consequence of which is to harass, oppress, or abuse
19 the Plaintiff in connection with the collection of a debt;

20 c. Defendant violated §1692d(5) of the FDCPA by causing a
21 telephone to ring repeatedly and continuously with the intent to
22 annoy, abuse and harass Plaintiff;

23 d. Defendant violated §1692e of the FDCPA by using false,
24 deceptive or misleading representations or means in connection

1 with the collection of a debt;

2 e. Defendant violated §1692f of the FDCPA by using unfair or
3 unconscionable means to collect or attempt to collect a debt; and
4
5 f. Defendant violated §1692g(a) of the FDCPA by failing to provide
6 appropriate notice of the debt within 5 days after the initial
7 communication including: (1) the amount of the debt; (2) the name
8 of the creditor to whom the debt is owed; (3) a statement that
9 unless the consumer, within 30 days after receipt of the notice,
10 disputes the validity of the debt, or any portion thereof, the debt
11 will be assumed to be valid by the debt collector; (4) a statement
12 that if the consumer notifies verification of the debt or a copy of a
13 judgment against the consumer and a the debt collector in writing
14 within the 30-day period that the debt, or any portion thereof, is
15 disputed, the debt collector will obtain copy of such verification or
16 judgment will be mailed to the consumer by the debt collector; and
17 (5) a statement that, upon the consumer's written request within
18 the 30-day period, the debt collector will provide the consumer
19 with the name and address of the original creditor, if different
20 from the current creditor.

28. As a direct and proximate result of one or more or all of the statutory violations above, Plaintiff has suffered emotional distress.

WHEREFORE, Plaintiff, ABIGAL BRASS, respectfully requests judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for the following:

- a. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act;
- b. Statutory damages of \$1,000 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
- c. Actual damages;
- d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
- e. Any other relief that this Honorable Court deems appropriate.

1 **DEMAND FOR JURY TRIAL**

2 PLEASE TAKE NOTICE that Plaintiff, ABIGAL BRASS, demands a jury
3 trial in this case.

4 RESPECTFULLY SUBMITTED,

5 DATED: 03/07/11 KIMMEL & SILVERMAN, P.C.

6
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